

E-FILED ON SEPTEMBER 27, 2006

Annette W. Jarvis, Utah Bar No. 1649
 RAY QUINNEY & NEBEKER P.C.
 36 South State Street, Suite 1400
 P.O. Box 45385
 Salt Lake City, Utah 84145-0385
 Telephone: (801) 532-1500
 Facsimile: (801) 532-7543
 Email: ajarvis@rqn.com

and

Lenard E. Schwartz, Nevada Bar No. 0399
 Jeanette E. McPherson, Nevada Bar No. 5423
 SCHWARTZER & MCPHERSON LAW FIRM
 2850 South Jones Boulevard, Suite 1
 Las Vegas, Nevada 89146-5308
 Telephone: (702) 228-7590
 Facsimile: (702) 892-0122
 E-Mail: bkfilings@s-mlaw.com

Attorneys for Debtors and Debtors-in-Possession

**UNITED STATES BANKRUPTCY COURT
 DISTRICT OF NEVADA**

In re:
 USA COMMERCIAL MORTGAGE COMPANY,
 Debtor.

Case No. BK-S-06-10725 LBR
 Case No. BK-S-06-10726 LBR
 Case No. BK-S-06-10727 LBR
 Case No. BK-S-06-10728 LBR
 Case No. BK-S-06-10729 LBR

In re:
 USA CAPITAL REALTY ADVISORS, LLC,
 Debtor.

Chapter 11

In re:
 USA CAPITAL DIVERSIFIED TRUST DEED FUND,
 LLC,
 Debtor.

Jointly Administered Under
 Case No. BK-S-06-10725 LBR

In re:
 USA CAPITAL FIRST TRUST DEED FUND, LLC,
 Debtor.

In re:
 USA SECURITIES, LLC,
 Debtor.

**DECLARATION IN SUPPORT OF EX
 PARTE APPLICATION FOR ORDER
 SHORTENING TIME TO HEAR MOTION
 FOR ORDER SCHEDULING AN
 AUCTION FOR THE SALE OF CERTAIN
 ASSETS, APPOINTING SPCP GROUP,
 LLC, AS LEAD BIDDER, AND
 APPROVING BID PROCEDURES AND
 PROTECTIONS
 (AFFECTS ALL DEBTORS)**

Affects:

- ☒ All Debtors
- ☐ USA Commercial Mortgage Company
- ☐ USA Securities, LLC
- ☐ USA Capital Realty Advisors, LLC
- ☐ USA Capital Diversified Trust Deed Fund, LLC
- ☐ USA Capital First Trust Deed Fund, LLC

Date: OST PENDING
 Time: OST PENDING

SCHWARTZER & MCPHERSON LAW FIRM
 2850 South Jones Boulevard, Suite 1
 Las Vegas, Nevada 89146-5308
 Tel: (702) 228-7590 · Fax: (702) 892-0122

Jeanette E. McPherson, under penalties of perjury, hereby declares and states as follows:

1. A Motion For Order Scheduling An Auction For The Sale of Certain Assets, Appointing SPCP Group, LLC, As Lead Bidder, And Approving Bid Procedures And Protections (the "Motion") was filed on September 22, 2006, by Schwartzer & McPherson Law Firm, attorneys for USA Commercial Mortgage Company, USA Securities, LLC, USA Capital Realty Advisors, LLC, USA Capital Diversified Trust Deed Fund, LLC, and USA Capital First Trust Deed Fund, LLC, the Debtors and Debtors-in-Possession (collectively, the "Debtors"). The Debtors request that the Court enter an order granting the Motion and:

A. Approving the Bid Procedures (attached to the Motion as Exhibit A) and thereby authorizing the Debtors, among other things, to: (i) establish minimum qualifications for potential bidders to participate in an auction process for the sale of USA Capital First Trust Deed Fund's ("FTD Fund") ownership interest as a direct lender in 47 specifically identified loans, for a proposed purchase price of \$46.5 million, subject to certain adjustments and conditions as stated in the Offer Letter (which is attached as Exhibit B to the Motion), and USA Commercial Mortgage's servicing rights in 80 specifically identified loans, including rights to collect servicing fees and other fees as specified in the Offer Letter, for a proposed purchase price of one-half of the first \$1 million in servicing fees to be collected by the purchaser, as well as certain upside sharing and other consideration, as more specifically described in the Offer Letter (the "Property"), (ii) conduct an in-Court auction to obtain the highest and best offer for the Property, and (iii) determine, along with the Official Committee of Unsecured Creditors of USA Commercial Mortgage and the Official Committee of Equity Security Holders of USA Capital First Trust Deed Fund, LLC, the highest and otherwise best bid for the Property (the "Successful Bid").

B. Approving SPCP Group, LLC as the "stalking horse" bidder for the Property, and authorizing the Debtors to pay to the SPCP Group, LLC: (i) a break-up fee in the amount of \$1.5 million (the "Break-Up Fee"), payable under certain circumstances as more particularly detailed in the Offer Letter and summarized in the Motion, which Break-Up Fee shall be reduced by the amount of the Expense Reimbursement (see as follows) actually paid to the SPCP Group, LLC, and (ii) an expense reimbursement which shall be limited to a maximum amount of actual and reasonable expenses incurred by SPCP Group, LLC not to exceed \$500,000 (the "Expense Reimbursement"), payable under certain circumstances as more particularly detailed in the Offer Letter.

C. Scheduling an auction (the "Auction") in accordance with the Bid Procedures in order to identify the "Successful Bid" and the "Next

Highest Bid" (as defined in the Bid Procedures) for the Property and approving the form of sale notice for the Auction.

2. The Debtors request that the hearing on the Motion be set for a hearing for October 19, 2006. A Notice Of Hearing was filed with this Court on September 26, 2006 and noticed to interested parties setting the hearing on October 19, 2006 at 9:30 a.m. Due to a clerical error, the deadline to notice the Motion was miscalculated, and interested parties were given only 22 days notice instead of 25 days. It is necessary to have this Motion to establish bid procedures heard by this date so that the other time frames and deadlines regarding this case are not adversely affected.

3. Notice can be shortened pursuant to Bankruptcy Rule 9006(c)(1) and LR 9006(a).

Dated: September 27, 2006.

/s/ Jeanette E. McPherson

Lenard E. Schwartzter, Esq.
Jeanette E. McPherson, Esq.
Schwartzter & McPherson Law Firm
2850 South Jones Boulevard, Suite 1
Las Vegas, Nevada 89146-5308
and

Annette W. Jarvis, Utah Bar No. 1649
RAY QUINNEY & NEBEKER P.C.
36 South State Street, Suite 1400
P.O. Box 45385
Salt Lake City, Utah 84145-0385

Attorneys for Debtors and Debtors-In-Possession

SCHWARTZTER & MCPHERSON LAW FIRM
2850 South Jones Boulevard, Suite 1
Las Vegas, Nevada 89146-5308
Tel: (702) 228-7590 · Fax: (702) 892-0122